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VETO—S. 742

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT MY APPROVAL S. 742, THE FAIRNESS IN BROADCASTING ACT OF 1987, WHICH WOULD CODIFY THE SO-CALLED FAIRNESS DOCTRINE

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To the Senate of the United States:

I am returning herewith without my approval S. 742, the "Fairness in Broadcasting Act of 1987," which would codify the so-called "fairness doctrine." This doctrine, which has evolved through the decisional process of the Federal Communications Commission (FCC), requires Federal officials to supervise the editorial practices of broadcasters in an effort to ensure that they provide coverage of controversial issues and a reasonable opportunity for the airing of contrasting viewpoints on those issues. This type of content-based regulation by the Federal Government is, in my judgment, antagonistic to the freedom of expression guaranteed by the First Amendment.

In any other medium besides broadcasting, such Federal policing of the editorial judgment of journalists would be unthinkable. The framers of the First Amendment, confident that public debate would be freer and healthier without the kind of interference represented by the "fairness doctrine," chose to forbid such regulations in the clearest terms: "Congress shall make no law . . . abridging the freedom of speech, or of the press." More recently, the United States Supreme Court, in striking down a right-of-access statute that applied to newspapers, spoke of the statute's intrusion into the function of the editorial process and concluded that "[i]t has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974).

I recognize that 18 years ago the Supreme Court indicated that the fairness doctrine as then applied to a far less technologically advanced broadcast industry did not contravene the First Amendment. *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). The *Red Lion* decision was based on the theory that usable broadcast frequencies were then so inherently scarce that government regulation of broadcasters was inevitable and the FCC's "fairness doctrine" seemed to be a reasonable means of promoting diverse and vigorous debate of controversial issues.

The Supreme Court indicated in *Red Lion* a willingness to reconsider the appropriateness of the fairness doctrine if it reduced rather than enhanced broadcast coverage. In a later case, the Court acknowledged the changes in the technological and economic environment in which broadcasters operate. It may now be fairly concluded that the growth in the number of available media outlets does indeed outweigh whatever justifications may have seemed to exist at the period during which the doctrine was developed. The FCC itself has concluded that the doctrine is an unnecessary and detrimental regulatory mechanism. After a massive study of the effects of its own rule, the FCC found in 1985 that the recent explosion in the number of new information sources such as cable televi-

sion has clearly made the "fairness doctrine" unnecessary. Furthermore, the FCC found that the doctrine in fact *inhibits* broadcasters from presenting controversial issues of public importance, and thus defeats its own purpose.

Quite apart from these technological advances, we must not ignore the obvious intent of the First Amendment, which is to promote vigorous public debate and a diversity of viewpoints in the public forum *as a whole*, not in any particular medium, let alone in any particular journalistic outlet. History has shown that the dangers of an overly timid or biased press cannot be averted through bureaucratic regulation, but only through the freedom and competition that the First Amendment sought to guarantee.

S. 742 simply cannot be reconciled with the freedom of speech and the press secured by our Constitution. It is, in my judgment, unconstitutional. Well-intentioned as S. 742 may be, it would be inconsistent with the First Amendment and with the American tradition of independent journalism. Accordingly, I am compelled to disapprove this measure.

RONALD REAGAN.

THE WHITE HOUSE, *June 19, 1987.*

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